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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/863,735	05/23/2001	Naishin Seki	JA9-2000-0085 (8728-516)	9928
46069 7590 09/19/2008 F. CHAU & ASSOCIATES, LLC 130 WOODBURY ROAD WOODBURY, NY 11797				
EXAMINER DANNEMAN, PAUL				
ART UNIT		PAPER NUMBER		
3627				
MAIL DATE		DELIVERY MODE		
09/19/2008		PAPER		

**Please find below and/or attached an Office communication concerning this application or proceeding.**

The time period for reply, if any, is set in the attached communication.

### Office Action Summary

**Application No.**

09/863,735

**Applicant(s)**

SEKI ET AL.

**Examiner**

PAUL DANNEMAN

**Art Unit**

3627

**Period for Reply** -- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

**Status**

- 1) ☒ Responsive to communication(s) filed on 20 June 2008.
- 2a) ☒ This action is **FINAL**. 2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

**Disposition of Claims**

- 4) ☒ Claim(s) 1-3, 5-8 and 20-25 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 1-3, 5-8 and 20-25 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

**Application Papers**

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
- Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
- Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

**Priority under 35 U.S.C. § 119**

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some \* c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
  2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
  3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

**Attachment(s)**

- 1) ☐ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftperson's Patent Drawing Review (PTO-948)
- 3) ☐ Information Disclosure Statement(s) (PTO/SB/C2)
- Paper No(s)/Mail Date \_\_\_\_\_
- 4) ☐ Interview Summary (PTO-413)
- Paper No(s)/Mail Date \_\_\_\_\_
- 5) ☐ Notice of Informal Patent Application
- 6) ☐ Other: \_\_\_\_\_

## DETAILED ACTION

### Response to Amendment

1. This action is in reply to Applicant's response filed 20 June 2008, to the first office action.
2. All pending Claims 1-3, 5-8 and 20-25 have been examined.
3. Claims 1 and 5 have been amended.
4. The numbering of Claim 24 (two of them) has been corrected. The Examiner thanks Applicant and withdraws the Objection to those claims.

### Response to Arguments

5. With regard to Claims 1 and 5, Applicant argues ***"Herz does not teach or suggest how to perform 'setting means for determining a dependency element specified for said product.'"*** The Examiner respectfully disagrees. Applicant's disclosure in at least paragraphs [0065, 0066, and 0073] clearly states that a dependency element can be "retail sales frequency, ranking information, number of purchases of the product, and number of retail sales." Herz in at least paragraph [0246] discloses the use of parameterized offers using price, a size, a price presentation, a sales pitch, an advertisement's visual style, etc. Herz in at least paragraph [0262] further discloses a shopper's records of purchases being used to generate promotions including price discounts, advertisements, or a shopping list. Further more, Claims 1 and 5 were rejected over Herz, in view of Freeny, and further in view of Kaminsky. The rejection of Claims 1 and 5 as per the first office action on the merits remains, therefore Claims 1 and 5 and their dependent claims are properly rejected and remain rejected.

***Claim Rejections - 35 USC § 103***

1. **Claims 1-3, 5-8, and 20-25** are rejected under 35 U.S.C. 103(a) as being unpatentable over Herz et al. (US 2001/0014868) hereafter known as Herz, in view of Freeny, Jr. (US 6,076,071) hereafter known as Freeny, and further in view of Kaminsky et al. (US 2001/0047308) hereafter known as Kaminsky.

Herz shows, in Figure 1, a system for the automatic determination of customized prices and promotions. The primary functions of the system for the automatic determination of customized prices and promotions (price setting means) 100 are:

- 1) To identify offers that are appropriate for each shopper,
- 2) To help the shopper become informed about these available offers (product information provision means), and
- 3) To facilitate any or all of the necessary transactions, such as electronic ordering or payment (retail means), if the shopper decides to accept an offer.

Herz further discloses demographic and/or consumer information about the shopper or similar shoppers is obtained from other databases, e.g., from a consumer database purchased from a credit-card company, or a database that correlates the response to telemarketing campaigns with demographic variables. The main computer selects offers from the offer database that are likely to result in profitable sales (price trend means, basic rule of supply and demand). "Retail sales state" and means for managing it, as vaguely defined in applicant's specification, is shown throughout the reference in demand curves and more specifically on page 32, paragraph [0301], which states, "Time series methods are also useful for detecting trends: one could do a linear regression on sales for a certain product over time, determining the overall direction of a product's sales. This information could be used to adjust offer-generating strategies, as it would indicate a waxing or waning of a customer's overall interest in a given product." But, while the price may be reset and changed with time in Herz's system, it is not specifically disclosed that pricing is dynamically set, at the time the user looks at it, and it is not disclosed that any trend

information regarding the pricing is displayed to the user. Herz in at least paragraph [0246] discloses the use of parameterized offers using price, a size, a price presentation, a sales pitch, an advertisement's visual style, etc. Herz in at least paragraph [0262] further discloses a shopper's records of purchases being used to generate promotions including price discounts, advertisements, or a shopping list.

However, Freeny in at least Column 3, lines 42-60 discloses a system which receives sales and inventory data and data from other sources to automatically change product prices. Freeny in at least Column 3, lines 66-67 and Column 4, lines 1-13 further discloses that product prices are dynamically adjusted at the checkout station, on message displays within the store, and etc. Freeny in at least Column 7, lines 63-67 and Column 8, lines 1-5 further discloses that the system detects the rate of purchase of each product and compares it to a predetermined limit and the price of each product is automatically adjusted upwards or downwards. Freeny in at least Column 8, lines 6-17 still further discloses that the system can automatically, based on the reduced supply of product, adjust the price of a product. Freeny does not specifically disclose providing the user with any pricing trend information.

Kaminsky in at least paragraph [0020] discloses a system that permits a merchant to dynamically price a single product, a group of products or an entire website. Kaminsky in at least paragraph [0035] and Figure 3 further discloses a user being provided with price trend information.

Therefore, it would have been obvious to one of ordinary skill in the art, at the time of the invention, to have modified the system of Herz so as to set the price of a product dynamically as taught by Freeny and to display the price trend information to the user in accordance with the teachings of Kaminsky, in order to generate more sales by urging the buyer to act quickly by giving the sense that the price being offered is a good deal and that it would not last for long.

Regarding ranking the popularity or evaluations of the products, while the pricing in Herz, Freeny and Kaminsky can be set based on the popularity of the items; neither reference specifically discloses ranking the items based on popularity or evaluations of the products. However, ranking items on the basis of their popularity or evaluations, then setting a price based on the ranking of a

list of products for sale, is old and well known (Prior Art admitted under OFFICIAL NOTICE). Therefore it would have been obvious, to one of ordinary skill in the art, at the time of the invention, to have further modified the system of Herz so as to rank the items for sale in order of their popularity or evaluations, and set the price in accordance with the rank, as it is well known to do so, in order to generate more revenue by charging higher prices for more popular items.

#### **Conclusion**

6. **THIS ACTION IS MADE FINAL.** Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the mailing date of this final action.

7. Any inquiry concerning this communication or earlier communications from the examiner should be directed to PAUL DANNEMAN whose telephone number is (571)270-1863. The examiner can normally be reached on Mon.-Thurs. 6AM-5PM Fri. off.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Florian Zeender can be reached on 571-272-6790. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

/Paul Danneman/

Examiner, Art Unit 3627

15 September 2008

/F. Ryan Zeender/

Supervisory Patent Examiner, Art Unit 3627